

AMENDED IN SENATE AUGUST 28, 2006

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY MAY 1, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2886

Introduced by Assembly Member Frommer *Members Frommer,
Lieu, and Parra*
(Coauthor: Assembly Member Lieu)
(Coauthor: Senator Poochigian)

February 24, 2006

An act to amend Section 530.5 of, and to add Section 530.55 to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2886, as amended, Frommer. Crime.

Existing law provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information of another person is guilty of a crime punishable by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment.

This bill would instead provide that every person who, with the intent to defraud, acquires or retains possession of the personal identifying information of another person, and who has previously been convicted of a violation of provisions proscribing identity theft, or who, with the intent to defraud, acquires or retains possession of the personal identifying information of 10 or more other persons, shall be

punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison. This bill would also provide that any person who, with intent to defraud, ~~or who knows or reasonably should know that the identifying information will be used to commit identity theft,~~ sells, transfers, or conveys the personal identifying information of another person shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison. *This bill would also provide that any person who, with actual knowledge that the personal identifying information of a specific person will be used in violation of identity theft provisions who sells, transfers, or conveys that personal identifying information shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.*

This bill would specify that, for purposes of these provisions, “person” includes natural persons living and deceased, and organizations, associations, business relationships and other legal entities, expand the definition of “personal identifying information” to include any ~~identifying information that uniquely describes a person~~ *form of identification equivalent to those already listed*, and make other conforming changes.

Because this bill would expand the definition of existing crimes and create new crimes, it would impose a state-mandated local program.

Existing federal law provides that mail theft is punishable by a fine, imprisonment for a period not exceeding 5 years, or by both.

This bill would provide that mail theft, as defined, is punishable by a fine, imprisonment in a county jail for a period not exceeding one year, or by both a fine and imprisonment. Because this bill would create new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 “Personal Information Trafficking and Mail Theft Prevention
3 Act.”

4 SEC. 2. Section 530.5 of the Penal Code is amended to read:

5 530.5. (a) Every person who willfully obtains personal
6 identifying information, as defined in subdivision (b) of Section
7 530.55, of another person, and uses that information for any
8 unlawful purpose, including to obtain, or attempt to obtain,
9 credit, goods, services, real property, or medical information
10 without the consent of that person, is guilty of a public offense,
11 and upon conviction therefor, shall be punished by a fine, by
12 imprisonment in a county jail not to exceed one year,, or by both
13 a fine and imprisonment, or by imprisonment in the state prison.

14 (b) *In any case in which a person willfully obtains personal*
15 *identifying information of another person, uses that information*
16 *to commit a crime in addition to a violation of subdivision (a),*
17 *and is convicted of that crime, the court records shall reflect that*
18 *the person whose identity was falsely used to commit the crime*
19 *did not commit the crime.*

20 (c) (1) Every person who, with the intent to defraud, acquires,
21 or retains possession of the personal identifying information, as
22 defined in subdivision (b) of Section 530.55, of another person is
23 guilty of a public offense, and upon conviction therefor, shall be
24 punished by a fine, by imprisonment in a county jail not to
25 exceed one year, or both a fine and imprisonment.

26 (2) Every person who, with the intent to defraud, acquires or
27 retains possession of the personal identifying information, as
28 defined in subdivision (b) of Section 530.55, of another person,
29 and who has previously been convicted of a violation of this
30 section upon conviction therefor shall be punished by a fine, by
31 imprisonment in a county jail not to exceed one year, or by both
32 a fine and imprisonment, or by imprisonment in the state prison.

33 (3) Every person who, with the intent to defraud, acquires or
34 retains possession of the personal identifying information, as
35 defined in subdivision (b) of Section 530.55, of 10 or more other
36 persons is guilty of a public offense, and upon conviction
37 therefor, shall be punished by a fine, by imprisonment in a

1 county jail not to exceed one year, or by both a fine and
2 imprisonment, or by imprisonment in the state prison.

3 (e)

4 (d) (1) Every person who, with the intent to defraud, ~~or who~~
5 ~~knows or reasonably should know that the identifying~~
6 ~~information will be used to commit a violation of subdivision (a),~~
7 sells, transfers, or conveys the personal identifying information,
8 as defined in subdivision (b) of Section 530.55, of another person
9 is guilty of a public offense, and upon conviction therefor, shall
10 be punished by a fine, by imprisonment in a county jail not to
11 exceed one year, or by both a fine and imprisonment, or by
12 imprisonment in the state prison.

13 (2) *Every person who, with actual knowledge that the personal*
14 *identifying information, as defined in subdivision (b) of Section*
15 *530.55, of a specific person will be used to commit a violation of*
16 *subdivision (a) who sells, transfers, or conveys that same*
17 *personal identifying information is guilty of a public offense, and*
18 *upon conviction therefor, shall be punished by a fine, by*
19 *imprisonment in the state prison, or by both fine and*
20 *imprisonment.*

21 (f)

22 (e) Every person who commits mail theft, as defined in
23 Section 1705 of Title 18 of the United States Code, is guilty of a
24 public offense, and upon conviction therefor shall be punished by
25 a fine, by imprisonment in a county jail not to exceed one year,
26 or by both a fine and imprisonment. Prosecution under this
27 subdivision shall not limit or preclude prosecution under any
28 other provision of law, including, but not limited to subdivisions
29 (a) to (c), inclusive, of this section.

30 (f) *An interactive computer service or access software*
31 *provider, as defined in subsection (f) of Section 230 of Title 47 of*
32 *the United States Code, shall not be liable under this section*
33 *unless the service or provider acquires, transfers, sells, conveys,*
34 *or retains possession of personal information with the intent to*
35 *defraud.*

36 SEC. 3. Section 530.55 is added to the Penal Code, to read:

37 530.55. (a) For purposes of this chapter, "person" means a
38 natural person, living or deceased, firm, association,
39 organization, partnership, business trust, company, corporation,

1 limited liability company, or public entity, or any other legal
2 entity.

3 (b) For purposes of this chapter, “personal identifying
4 information” means ~~either of the following:~~

5 ~~(1) Any name or number that may be used alone, or in~~
6 ~~conjunction with any other information, to identify a specific~~
7 ~~individual person, by~~ any name, address, telephone number,
8 health insurance number, taxpayer identification number, school
9 identification number, state or federal driver’s license, or
10 identification number, social security number, place of
11 employment, employee identification number, professional or
12 occupational number, mother’s maiden name, demand deposit
13 account number, savings account number, checking account
14 number, PIN (personal identification number) or password, alien
15 registration number, government passport number, date of birth,
16 unique biometric data including fingerprint, facial scan
17 identifiers, voiceprint, retina or iris image, or other unique
18 physical representation, unique electronic data including
19 information identification number assigned to the person, address
20 or routing code, telecommunication identifying information or
21 access device, information contained in a birth or death
22 certificate, or credit card number of an individual person, *or an*
23 *equivalent form of identification.*

24 ~~(2) Any other identifying information that uniquely describes~~
25 ~~a person.~~

26 SEC. 4. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the
31 penalty for a crime or infraction, within the meaning of Section
32 17556 of the Government Code, or changes the definition of a
33 crime within the meaning of Section 6 of Article XIII B of the
34 California Constitution.